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1430-1700 Wed

**COURSE SYLLABUS**  
**COM. 407 - LAW OF MASS COMMUNICATIONS**  
**Spring, 1990**

**Course Content and Approach** - Mass Communications Law is a survey of laws and government regulations that affect the mass media in the United States. The course begins with an introduction to the legal system itself and then covers each major type of legal problem faced by the media in this country. Com. 407 is mainly a lecture-discussion course intended to convey ideas and factual information, not a "methods" course that teaches communication skills.

**Course Requirements** - There will be three exams: two midterms and a non-cumulative final. Each will be a multiple-choice test covering about one-third of the lecture material and reading assignments in the course. You will need a Scantron 882 form for each test. Please note that exams must be taken at the scheduled time except under *documented* extenuating circumstances such as an illness serious enough to require medical attention. Exams may not be made up if missed due to work conflicts or car trouble, for example. Plan ahead so you can be present on the three exam days--and allow yourself plenty of time to get to CSUF on those days even if your car is temperamental.

**Grading** - Grades are based on a point system. Each of the three tests is worth 100 points, for a total of 300 possible points. For an "A", you need 270 points, while 240 assures you a "B" and 210 a "C". These cutoff scores may be lowered slightly (but not raised) if necessary to produce a more equitable grade distribution. The minimum passing score, which will not be lowered, is 150 out of 300 points.

**Textbooks** - The textbooks are Communications Law and the California Supplement (spring, 1990 editions). Both are being duplicated by the Titan Bookstore.

**CLASS SCHEDULE - FALL, 1989**

**WEEK OF:**

1/29-2/2   Overview of the legal system  
2/5-9   History of the First Amendment  
2/12-16   Prior restraints/Libel and slander  
2/19-23   Libel and slander (continued)  
2/26-3/2   Exam #1, covering lectures, text and  
supplements (ch. 1,2,3,4,14)  
3/5-9   Invasion of privacy  
3/12-16   Copyright law  
3/19-23   Free press v. fair trial and contempt  
of court  
3/26-30   Legal problems of newsgathering

**WEEK OF:**

4/2-6   Exam #2: ch. 5,6,7,8,9  
4/9-13   Spring vacation (no classes)  
4/16-20   Obscenity law from Comstock to  
"Hustler"  
4/23-27   Electronic media regulation  
4/30-5/4   Electronic media (cont'd)  
5/7-11   Advertising regulation  
5/14-18   Antitrust law, course wrapup  
5/21-25   Exam #3: ch.10,11,12,13

## CASES

Tinker v. Community School District, 393 U.S. 503 (1969)  
Papish v. University of Missouri Curators, 410 U.S. 667 (1973)  
Joyner v. Whiting, 477 F.2d 456 (1973)  
Bazaar v. Fortune, 476 F.2d 570, cert. den. 416 U.S. 935 (1973)  
Bright v. L.A. Unified School District, 18 C.3d 450 (1976)  
Stanley v. Magrath, 719 F.2d 279 (1983)  
Bethel School District v. Fraser, 478 U.S. 675 (1986)  
Hazelwood School District v. Kuhlmeier, 108 S.Ct. 562 (1988)  
Leeb v. DeLong, 198 C.A.3d 47 (1988)

## CUTOFF POINT FOR EXAM #1

## PRIVACY AND PUBLICITY

### CONCEPTS

- Physical intrusion
- Private facts
- False light
- Right of publicity/misappropriation
- Inheritability of the right of publicity
- Defenses and when they apply

### CASES: The development of privacy law

Pavesich v. New England Life Insurance Co., 50 S.E. 68 (1905)  
Katz v. U.S., 369 U.S. 347 (1967) (reversing Olmstead v. U.S.)

Griswold v. Connecticut, 381 U.S. 479 (1965)

Roe v. Wade/Doe v. Bolton, 410 U.S. 113 (1973)

Bowers v. Hardwick, 478 U.S. 186 (1986)

*Calif. v. Onassis*

CASES: Supreme Court media decisions

Time Inc. v. Hill, 335 U.S. 374 (1967)

Cantrell v. Forest City Publishing, 419 U.S. 245 (1974)

Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562 (1977)

Cox Broadcasting v. Cohn, 420 U.S. 469 (1975) —

Florida Star v. B.J.F., 109 S.Ct. \_\_\_\_ (1989)

CASES: California decisions

Melvin v. Reid, 112 C.A. 285 (1931)

Briscoe v. Readers Digest, 4 C.3d 529 (1971)

Sinatra v. Goodyear, 435 F.2d 711 (1970)

Lugosi v. Universal Pictures, 25 C.3d 813 (1979)

Diaz v. Oakland Tribune, 139 C.A.3d 118 (1983)

Nicholson v. McClatchy Newspapers, 177 C.A.3d 509 (1986)

Fellows v. National Enquirer, 42 C.3d 234 (1986)

Midler v. Ford Motor Co., 849 F.2d 460 (1988)

## COPYRIGHT AND UNFAIR COMPETITION

### CONCEPTS

What can be copyrighted

What cannot be copyrighted

How to obtain a copyright

The Fair Use Doctrine

Compulsory Licensing

Remedies for infringement

Copyright problems: music, computers, cable television

Commerce law: copyright

Unfair competition

Moral rights

Trademarks

Designs/Conventions

California © right de suerte law

## CASES

International News Service v. Associated Press, 332 U.S. 215 (1951)

Teleprompter v. CBS, 415 U.S. 394 (1974) (see also)

Fairlight v. United Artists, 332 U.S. 391 (1953)

Sheldone v. Metro-Goldwyn Pictures Corp., 339 U.S. 398 (1950)

Rosemont Enterprises v. Random House, 362 U.S. 316 (1960)

Sony Corp. of America v. Universal City Studios, 464 U.S. 417 (1984)

Harper & Row Publishers v. The New York Times, 471 U.S. 506 (1985)

Selar Music v. The Gap Inc., 812 F.2d 1397

(Compare 20th Century Fox v. MCA Inc., 443 U.S. 276)

Community for Creative Non-Violence v. Reid, 470 U.S. 236 (1985)

## FIRK TRIAL-POWER POINTS

### CONCEPTS

The Sixth Amendment

Protective ("pig") orders

Sequestering, change of venue, etc.

Closing arguments during:

- trials
- preliminary hearings
- testimony of minors or sex crime victims
- jury selection

Conferences in courtrooms and (Rule 970)

Penal Code sec. 868

### CASES

Irvin v. Dowd, 365 U.S. 717 (1961)

Ridgeau v. Louisiana, 393 U.S. 902 (1969)

Penno v. Texas, 393 U.S. 872 (1968)

Sheppard v. Maxwell, 384 U.S. 353 (1966)

Nebraska Press Assoc. v. Olson, 427 U.S. 399 (1976)

Connecticut v. DePietro, 443 U.S. 213 (1979)

Richmond Newspapers v. Virginia, 448 U.S. 517 (1980)

Chandler v. Florida, 445 U.S. 542 (1980)

State Newsprint Co. v. Superior Court, 447 U.S. 339 (1980)

Press-Mercury Co. v. Superior Court, 447 U.S. 349 (1980)

Press-Enterprise Co. v. Superior Court, 447 U.S. 359 (1980)

(Note: there are two different cases with the same name)

## REPORTER'S PRIVILEGE, SHIELD LAWS AND CONTEMPT OF COURT

### CONCEPTS

- Direct and indirect contempt
- Civil and criminal contempt
- Shield laws and reporter's privilege
- Newsroom searches

### CASES

Farr v. Superior Court, 22 C.A.3d 60 (1971); Farr v. Pitches, 522 F.2d 464 (1975);  
In re Farr, 36 C.A.3d 577 (1974) and 64 C.A.3d 605 (1976)

Rosato v. Superior Court, 51 C.A.3d 190 (1975)

Bridges v. California and Times-Mirror v. Superior Court, 314 U.S. 252 (1941)

Pennekamp v. Florida, 328 U.S. 331 (1945) (see also Craig v. Harney, 331 U.S. 367)

Branzburg v. Hayes, 408 U.S. 665 (1972)

KSDO v. Superior Court, 136 C.A.3d 375 (1982)

Mitchell v. Superior Court, 37 C.3d 268 (1984)

Zurcher v. Stanford Daily, 436 U.S. 547 (1978)

## FREEDOM OF INFORMATION

### CONCEPTS

Freedom of Information Act

Government in the Sunshine Act

Privacy Act of 1974

"Buckley Amendment"

Ralph M. Brown Act

Film censorship

Penal Code sec. 311

## CASES

Hannegan v. Esquire, 327 U.S. 146 (1946)

+ Roth v. U.S., 354 U.S. 476 (1957)

+ Jacobellis v. Ohio, 378 U.S. 184 (1964)

+ Memoirs v. Massachusetts (the "Fanny Hill" case), 383 U.S. 410 (1966)

+ Ginzburg v. U.S., 383 U.S. 463 (1966)

+ Ginsberg v. New York, 390 U.S. 629 (1968)

Stanley v. Georgia, 394 U.S. 557 (1969)

U.S. v. Reidel and U.S. v. 37 Photographs, 402 U.S. 351, 363 (1971)

+ Miller v. California, 413 U.S. 15 (1973)

Jenkins v. Georgia, 418 U.S. 153 (1974)

+ Young v. American Mini-Theatres, 427 U.S. 50 (1976)

Schad v. Mt. Ephraim, 452 U.S. 61 (1981)

New York v. Ferber, 458 U.S. 747 (1982)

Renton v. Playtime Theatres, 475 U.S. 41 (1986)

Pope v. Illinois, 107 S.Ct. 1918 (1987)

Morris v. Municipal Court, 32 C.3d 553 (1982)

Comm 407 1-29 [26]

Attorney - worked for -  
NAB - National Association of Broadcasters.

The Legal System -

Major Concepts -

Law = 1) STATUTORY LAW - (ENACTED BY CONGRESS...) LEGISLATIVE BODIES  
WITNESS DONE

2) COMMON LAW - NOT NECESSARILY WRITTEN DONE  
ACCUMULATION OF RULINGS & PREVIOUS DECISIONS  
"LEGAL PRECEDENTS"  
e.g., LIBEL - false hurt someone's reputation -  
concept grew out of common law  
(ALI vs. libel (C.L.) → became statutory  
"market share liability" law develops ~~but~~ but  
in legal action → courts...)

3) CONSTITUTIONAL LAW - similar to common law  
but starts with legal document -

e.g. 1st amendment → no legal precedent vs. freedom  
of religion / speech / press... flag burning -  
Founders didn't consider flag burning.  
1896 - Supreme Court reversal -

Missouri vs. Ferguson, segregation okay  
1954 Brown vs. Board of Ed., reversal decision  
\* separate facilities should not be equal.  
(segregation → rights & privacy.)  
reflects major change in society.

why person it worked = mechanism to change  
constitutional law.

< American legal System's Greater Hats → Supreme  
Court rule others follow >

4) Administrative Law: all rules + regulations  
adopted by fed/govt agencies

e.g. → FCC rules governing broadcasting/cable  
Fair Political Practices Commission → P.R. & vote  
& city newspaper -

Equity → not law → England - Common Law -  
contract ~~must~~ must be kept, break of  
contract = bad - ~~bad~~  
farmer's calf & ten innkeeper → appeal to

the King - overrule law in appeal to fairness  
↓

Chancery Court

release of contract → e.g. marriage abductions  
in interest of fairness

negotiations for p. restraining

Judge's sense of fairness

VS. no separate  
court but rule  
of judge.

## \* Stephan Lanzl (see book) profile of Lanzl.

### Dif. Between Crim. & Civil Actions:

e.g.: Drunk hits car - Drives car & kills passenger  
↓ Crime against society as a whole → people vs Smith  
↓ Sport - manslaughter - jail or fine to government

↓ Damages - money as compensation in a civil  
case for wrong done → damages vs Smith.  
Courts provide a neutral forum.

3 Basic kinds of Damages:

1) general: <sup>compensation</sup> pain & suffering > libel = embarrassment  
compensation for intangible

2) special - compensate for provable tangible loss  
(car cost to fix from 3 estimates, medical  
cost)

3) punitive: author set \$ out to do something  
to do something - malice - vicious  
set ~~\$~~ out + got someone  
just anger at the bad guy (tickle)  
median liability.

(20)

Comm 407 2/5  
H-524 (?)

1st & 4th Amendment  
Prior Restraint

Can Government Ban Racist Speech?

GITLOW  
SCHENCK  
WHITNEY  
YATES

BRANDENBURG  
JOHNSON

FEB 26 - (1st exam) P. 250 Powers from major parts of  
CONSTITUTION

1st Amendment → 6 RIGHTS - (1) RELIGION  
(2) FREE EXPRESSION  
(3) SPEECH  
(4) PRESS  
(5) ASSEMBLY  
(6) PETITION GOVT

WHAT UNDERSTANDING →

RELIGION → 1700s - most European states  
had established/official churches

(work) - NO OFFICIAL STATE SPONSORSHIP OF RELIGION  
eg. TEACHER CAN'T LEAD RELIGIOUS PRAYER,  
REGARDLESS GENDER & NATURE -

CONGRESS → STATE GOVT,

↳ School Prayer / INTEGRITY SCANDS/ etc.  
Govt shall not sponsor REL ACTIVITY

PROB expression of REL. : Govt ~~DOES~~ Doesn't  
mess w/ Religious Affairs -  
FRAUD conviction of Mr. BROWN?  
Some are committed FRAUD. RESTLESS.  
WORRIES & CONCERN VS. Religious conviction  
REL. is changing, USE of, MODERN

( PROB of SPEECH &  
PROB of THE PRESS  
How is the Amendment GOING TO BE ?

First 150 years before 1<sup>st</sup> Amendment court cases  
Second 14 years before First OUTCRY law:  
1798 - Alien & SEDITION ACTS - Silences POLITICAL  
~~freedom of~~ DECENT  
14 years to become citizen - Power to deport  
Citizens to criticize Govt & Govt officials  
ONLY Jeffersonians PROSECUTED - PUBLIC OUTCRY  
BOD → Jeffersonians came to power - Congress &  
Govt BY VOTE ( ESTABLISHED BY THEIR STANDARDS )  
Temporary laws

1910 SEDITION ACT = CRIMES TO INTERFERE w/ ARMED FORCES  
RECRUITING -  
SCABBIKE CASE ( p. 3 )

## SCOTT V. U.S. GOVT -

POLITICAL LEAPERS @ FAM RAILROAD  
STATION "DRAFT = IN VOLUNTARY SERVITUDE,  
GO HOME" 13<sup>th</sup> AMENDMENT -

conviction contrary to 1<sup>st</sup> amendment -

Supreme Court: "1<sup>st</sup> amendment was not designed"

OLIVER WENDELL SAYS SPEECH IS SO DANGEROUS THAT THEY CAN BE BANNED  
"TORIES '80s" <sup>for</sup> CLEAR & PRESENT DANGER" - lost

↳ Similar to SCOTT - UPWARD move freedom of expression

WHITNEY VS. CALIF. 60 year-old浪子 communist,  
charge of being a communist,  
RIGHTS VIOLATED BECAUSE OF POLITICAL BELIEF  
POLITICAL BELIEF = DISSENTING OPINION, NO C&P D

allow registration act of 1940

'60s - SWEAT ACT = CHTNS = violent overthrow of  
GOVT -

YATES VS. U.S. → "UNTIL CALL FOR ACTION" 1<sup>st</sup> amendment

PROTEST, ADVOCACY & IDEAS BUT IF  
SPEECH BANNED CALL FOR ACTION THIS CRIMINAL.

## 1920 GRIER (p.3) VS NEW YORK

"LEFT WING INFLUENCE" BUT NOT MARKIST  
1920 14<sup>th</sup> amendment post CIVIL WAR LAW PROHIBIT SLAVERY  
"DRAFT PRESS" CAVES - "LIBERTY" → AMENDMENT  
APPLIES TO STATES VIA 14<sup>th</sup> amendment

To all Courts

GILLOU - 1<sup>st</sup> Amendment applies but  
CPD ~~GILLOU~~ loses case.

So what violates 1<sup>st</sup> Amendment?

YATES → ABSTRACT IDEA OKAY

Brown v. Board of Education (1954)

Biggy of Ohio Klan, membership drops, ADVERTISE  
got to reach an audience, TV videotapes & speech,  
prosecuted for this speech and convicted &  
Supreme Court, "Bentley danger leads to violent action"

Jones v. Texas (1989) - flag-burning -

1<sup>st</sup> Amendment protects political protest to burn  
flag, SACRED SYMBOL, CROSS PICTURE  
A law standing for Supreme Court test...

1.28 flag protection act of 1989

First Amendment freedom of speech!

## Prior Restraints (Censorship)

→ RESTRICTION ON WHAT A MEDIUM CAN PUBLISH BY  
GOVT BEFORE HAND  
(OPPOSING) SUBSEQUENT PUNISHMENTS  
FALSE ADVERTISING → AFTERWARD.  
OBSCENE MATERIAL.

### NEAR U.S. MINISTER (1931)

SATURDAY PRESS - LIES & SCANDALOUS REPORTS ABOUT  
GOVT OFFICIAL → LAW: BANNED AFTER

DECLARED PUBLIC NAUSEA. COURT HAD FILED  
SUITS OF LIBEL BUT AN OUT OF BUSINESS PUNISHMENT  
BUT CANT-BAN → GOVT HAS A VERY HEAVY  
BURDEN OF PROOF.

### NEW YORK TIMES VS. U.S. (PENTAGON PAPERS)

Vietnam War, Pentagon "YOU DID WE GOT INTO  
THIS MESS?" RAND CORP DID STUDY.

BILLED AS TOP SECRET - FOUR ADMINISTRATION  
BLASTED (2 DOWNS/2 REPROBCTIONS) -

DANIEL BELL BARS → 36 VOLUMES PHOTO COPIES,  
BOXES DUMPED ON THE DOORSTEP OF NY TIMES.

IMPORTANT TO VIETNAM DEBATE - VOLUME ONE  
PUBLISHED NIXON/MCNAMEE/NY JUDGE RESTRAINING  
ANOTHER COPY ON THE DOORSTEP OF WASHINGTON POST

BOSTON GLOBE / LA. TIMES

PRIOR RESTRAINT "NATIONAL SECURITY"

NATIONAL  
SECURITY

SUPREME COURT BUSHWICK SESSION -

Timber process - 6-3 ALLOW

NEWS PAPERS TO PUBLISH

ONLY 2 VICTORY = ABSOLUTISTS

4 of 6 → SUBSEQUENT PUNISHMENT

LOSED TO BY ADMIN. PROSECUTION  
LIMITED VICTORY ...

BUSHWICK → STATE FILED FROM BUSHWICK'S PSYCHIATRIST  
GOVT MISCONDUCT CASE DISMISSED

UNDER RIGHT CIRCUMSTANCES COULD HAVE PROVIDED  
RESTRAINT ON THE BASIS OF NATIONAL SECURITY  
BUT NOT PROTESTANT PAPERS CASE

GERMAN'S MARCH CASES - p. 4,

7 '30s - '40s

TRIMES { vs CITY "  
LUBBL  
SCANDON }

BOOK TO DOOR SOLICITATION  
- OTHERS FIND IT A  
NUISANCE -

CITIES BANNED DOOR TO DOOR OR STREET CORNER

DISTRIBUTION (LITTER LAWS) / REBATE LAWS

(1) GOVT HAVE RIGHT TO REGULATE TIME/PLACE/POWER  
ON FIRST AMENDMENT RIGHTS

SUPREME  
COURT  
DECISION

ABHORNING LITERATURE CASE AFTER CASE

### LITERATURE DISTRIBUTION

HOFERON CASE  $\rightarrow$  KRISHNA ORS -

MINNESOTA STATE FAIR - KRISHNA

WANTED TO "DO OTHER THING," DISTRIBUTOR LT./  
CRAFT / SOLICITORS WANTED . . .

ABHORON  $\rightarrow$  WANTS TO GIVE THEM A ~~BEST~~

STATE SUPREME COURT  $\rightarrow$  KRISHNA WON  
U.S. : " "  $\rightarrow$  ~~REVERTED~~  
THE, PLACE & NUMBER

NEVER KRISHNA FAIR FANS THE RIBOT IN MASS  
TO DO IT BUT AS INDIVIDUALS YES -  
ALLOWED IN SPECIFIC AREA

LAX - BOARD OF AIRPORT COMMISSION VS  
VANS FOR ~~VEHICLES~~ (

TRYED TO RESTRICT RELIGIOUS ACTIVITIES AT LAX . . .  
(NO FIRST AMENDMENT ACTIVITIES AT ALL AT  
LAX)

- HANDING OUT LITERATURES AT LAX - LEFT POSSIBLY  
SUPREME COURT OVERTURNING CASE -  
CAN RESTRICT THIS/PLACES/NUMBER BUT NOT  
ACROSS THE BOARD BAN!

What about ~~striking~~ ~~wall~~ - PRIVATE PROPERTY?

Yes + No

Do ~~Robbins~~ / POLITICAL ACTIVITY

NO FIRST AMENDMENT RIGHT TO ~~STRIKE~~ AT PRIVATE  
STRIKING ~~BOYCOTT~~ WALL

ANDREWS VS. NLRB

↓

UNFAIR LABOR PRACTICE TO FORBID  
WORKERS TO PICKET AT PLACE OF BUSINESS

PRUNELAND SUPPLY COMPANY VS. ROBBINS. —

↓ CALIF SUPREME COURT DECISION AFFIRMED BY  
US SUPREME COURT

(P. 2) CALIF SUPPLY CO.  
RIGHT TO DO SOMETHING UNDER STATE ~~LABOR~~ LAW  
NOT ALLOWED FORBIDDEN UNDER FED LAW

CONQUEST → STATES RIGHT OVER PROPERTY RIGHTS

STATES CAN GIVE MORE FREEDOM THAN US. CONST.

→ STATES RIGHT... WALL OWNERS → BOND WE

THE/PLACE/OWNER

UTTERING DISTRIBUTION - NEWSPAPER -

REPORTER'S WORKSTATION

LOCATION AND VS. PLAIN DEALER -

CAN PLAIN DEALER PUT NEWS RACKS IN

LAKEWOOD? YES, CARRY NEWS ACROSS

THE BOULEVARD. CAN LIMIT BUT NOT ~~END~~ BAN

DAY ALLOWED NEWS BUT NOT OTHERS

CALIF FAIR CRITERIA . . . PRIVATE PROP  $\hookrightarrow$  NO

CALIF) CANT TAKEBEB OWN HOUSE FROM SIDEWALK

FRISBIES VS

1988 p. 40

YOU CAN WALK UP DOWN THE  
STREET BUT NO TRESPASSING

Rock music / 1st Amendment

WILARD VS. ROCK AGAINST RACISM - CONTROL PARK ROCK

CONCERTS - DECIBEL RESTRICTIONS  $\Rightarrow$  CITY TICKETS

ON THE BOARDS  $\Rightarrow$  SOUND MIX PROBLEMS -

TICKET TICKETS / CITY CONTROL OF INTEGRITY VOLUME - Suit

ROCK PROTECTOR / BUT INTEGRITY VOLUME IS IMPORTANT

TIME / PLACE / VOLUME

36 p. - DECIBEL OPINION

BURBANK / STARLIGHT BOWL ALLOWED SOME CONCERTS

BUT NOT OTHERS.

THE ACT — AS FORM OF CENSORSHIP

( p. 3 ) — GROSSBERG VS. A&E. PRESS

Louisiana '30s — Political Boss — busy link  
didn't like OPPRESSIVE PRESS —  
low TAXED large newspapers —

S. COURT → THIS TAX IS DISCRIMINATOR

IT SINGLES OUT media, ONLY DISCRIMINATOR TAX

SPARTINA TRIBUNE

( 8 ) : MINNESOTA . . . TAX MATERIALS USED BY  
NEWSPAPERS + EXEMPTED SMALL NEWSPAPERS  
OSCEOLA  
VIOLATION OF FIRST AMENDMENT —  
SELECTED some media + not other

WATER'S PROTECT VS. RAGS LUMBER  
ARKANSAS — some MAGAZINES —

'COULD GOVT OFFICIALS TO NODES TAX ON  
MAG CONTENT — CAN BE PART OF  
PENAL RESTRAINT

TEXAS — EXEMPTION FOR RELIGIOUS PUBLICATIONS  
CONTENT / REL. + STATE.

( 8 )  
P. 70

TEXAS media — CALIF,  
↳ city TAXES all print + BROADCAST media  
BASED ON ADVERTISING / LOWER COURTS SAID OKAY  
U.S. SUP COURT WOULDN'T HEAR CASE

comes 407 2/12

[  
EXAM  
→ 4 plus chapters -  
chapt 14 items ]

## Chapt 14: Freedom of the Student Press

highlights → (20 yrs.) First Amendment protects  
1969 Code student publications

State action present e.g. public school teachers

Tinker vs Community school district

black arm bands to protest Vietnam War

Students do have 1st Amendment Right -

if doesn't cause/twisten disruption...

if it doesn't interfere w/ educational processes...

Official school paper couldn't arbitrarily censor it.

\* Bethel School Dist. vs Frazier -

Expelled from school for truancy -

did they have the right to expel him →

Supreme Court reversal - not 1st amendment issue  
administration finds offensive in discipline

Hazelwood → school paper articles on divorce &  
teenage pregnancy ...

principal tells printer not to print  
the paper ... prior restraint ...

official school paper ... first amendment  
rights not violated - high school decision -  
not decision on college publication.

California Ed. Code 48907 →

"Principals not allowed to arbitrarily  
censor school reading/news papers  
unless material obscene, libelous,  
causes material "danger"  
state main issue freedom of students

LIBEL [chapter 4]  
+ Standard

Written defamatory [standard = spoken]

Libel Elements

- (1) Defamation "statement tends to hurt someone's character" - if found untrue
- (2) Identification - mistaken id - identified way + ~~that's what~~
- (3) Dissemination - letter  $\Rightarrow$  3rd party + see ~~or~~ or heard
- (4) Publishing Fault - showed D actual malice / negligence - Sullivan Rule

will receive ... and media can be  
sped out w/ single libel case.

### Defenses

must have all elements but only one of the defenses

(1) Truth - "can you prove that its true"  
Supreme Court - person bringing suit  
must prove all allegations false

(2) Fair Comment - allows media to  
make commentary / opinion of  
public figures - protects expression of  
opinions - value judgement vs statement  
& fact -

clearly marked as opinion are protected  
by first amendment.

(3) Privilege - protects media when reporting  
govt documents & proceedings.

Witness: members of congress protected  
from suit for statements made in  
congress  $\rightarrow$  media should report on  
proceedings & expanded to include  
all gov't ~~work~~ proceedings: city council  
court ...

must be accurate account of proceedings.

Libel per se - defamatory statement -  
words interfering with earning

per quod if you know whole story it  
would be libelous...

A.8. Feltas vs. National Enquirer  
Did it say he was married, didn't cheat...  
only case of special damages  
in C.A.P.

Can go back for special damages - "they  
hurt my feelings / embarrassed"

CdParmin → retraction laws -  
if retraction is published w/i 21 days  
of request or at choice → person bringing  
suit can only ~~sue~~ sue for special damages  
- retraction must be as prominent as  
libelous statement  
- only permitted by newspaper broadcasters  
(not magazines... not even news magazines)  
Carol Burnett or National Enquirer

Verdict

Court Decisions:

NY Times vs Sullivan - (1964)  
- Civil rights -

South Carolina Leadership Conference

Ad ✓ NY Times soliciting for funds  
for Civil Rights movement - statements in  
ad not quite true

Sullivan sues NY Times in Alabama courts  
story words Sullivan 1/2 million

state court affirms Sullivan & lectures NY Times  
Supreme Court important free & press - S.C. didn't  
mention any libel cases

⇒ Sullivan rule - public officials must prove  
( actual malice knowing by  
recklessness or w/ reckless disregard for  
the truth )

Cortis Publishing vs Botts / AP vs Walker  
St. Louis Evening Post - expose on athletic  
Director had fixed football game  
(1) electronic monitoring error rule  
(2) wrote as a convicted fraud  
(3) what Bryant could have learned from  
conversation would have learned from  
files & scouting reports

AP vs Walker - breadth goes to Old Miss. -  
KKK organized rally to set breadth though

without trial -

German soldier in WW II who was trying to stop the integration = Communist plot within country - forcibly returned - goes to court - speaks when health is threatened - goes to Supreme Court

Supreme Court → both guys are public figures  
have to prove actual malice

Botts → <sup>comes</sup> story improbable - S.E. Post had plenty of time to check = reckless disregard for the truth

AP → wire - after reckless disregard not proven reporter / the consistency / track record...

Public officials > actual malice  
Public figures  
Private persons - negligence  
Private matters - no fault

people on trial  
light - voluntary  
under pressure -  
access to rebuttal

→ Gertz vs. Welch - '68 Chicago Democratic Convention - wrongful death suit brought about Chicago Police - officer found guilty for 2nd degree murder -

John Birch Society article says 2nd  
Communist plot & discredit police & lawyer  
is communist sympathizer

Supreme Court - question is whether Gertz  
has to prove actual malice -

need ~~verb~~ category  $\rightarrow$  Gertz = private  
person - not as heavily a burden of proof  
not prove negligence = sloppy reporting

rather than prove actual malice  
 $\rightarrow$  cases will ~~turn~~ on whether person bringing  
the suit is a public ~~person~~ or private person.

blame a public figure / private person?

Chi, Inc. v. Firestone (1976) - "divorce because of  
adultery" - Chi was at this point a  
law - negligence but not actual malice -  
is she a public figure - ~~Florida~~ Florida law  
adultery not given awarding alimony -  
Supreme Court  $\rightarrow$  Firestone = private person

Holston was a PRX works Golden Peacock Award  
Teeth cleaning of Simichs  $\rightarrow$  dental studies  
P.R. release  $\rightarrow$  suit filed, minor point  
official w/ govt grants isn't Supreme Court  
calls him private person - A Public official  
must be major celebrity.

Dun & Bradstreet v. Greenmost Builders

→ this is not an issue of public concern  
purely private matter — person doesn't  
have prove any part — credit rating  
service.

Other cases:

Calder vs. Jones — N.E. 3 cases:  
Keeler vs. Hustler — Hustler sue in  
publication anywhere that is  
sold or where published —  $\Delta$   
can ~~not~~ sue where ever publication make  
economic contact

Philadelphia Newspapers vs. Hepps

Burden of proof on person suing that statement  
is false

Anderson vs. Liberty Lobby (1986) —

Summary judgment — person suing  
doesn't work facts in case — then it is

Hustler Magazine vs. Falwell — (1988)

Libel in ~~not~~ infringement of emotional distress  
must prove actual malice  $\Rightarrow$  Par-  
-onality

Council Lied  $\Rightarrow$  pr 6 syllabus  
very rare - about things civil

1964 - Garrison v Louisiana not prove in place

Cult. cases -

Expression of Opinion is not basis of act  
not also if school presented as fact.

Send Black City Council

Baker v Hazel Baker - opinion

Kilkora vs. Younger - Privilege (82) Defense  
needs accurately report what said.  
Organized Crime ~~accusation~~

Bindrim v. Mitchell - fiction w/ recognizable  
cultural characters ... possibly because libel  
case -

SCANTON '882

# SAMPLE EXAMINATION QUESTIONS

## Communications 407

1. The initial step in most civil lawsuits is to file a document called the: a) complaint; b) rejoinder; c) demurrer; d) remittitur; e) indictment.
2. Decisions of the Federal Trade Commission may be appealed to the: a) Court of Claims; b) District Court; c) District Court of Appeals; d) Circuit Court of Appeals; e) Supreme Court.
3. Here's a legal citation: 419 U.S. 245 (1974). What does "U.S." tell you about the case? a) absolutely nothing; b) that it is a Supreme Court decision; c) that it is a U.S. District Court case; d) that it is a criminal case, not a civil case; e) that the U.S. government lost the case in 1974.
4. Areopagitica is a famous early defense of freedom of expression. Its author was: a) Ben Franklin; b) J.J. Rousseau, c) John Milton; d) Thomas Jefferson; e) John Locke.
5. The Sedition Act of 1798: a) recognized truth as a defense against libel charges; b) was seen by many anti-federalists, notably Jefferson and Madison, as a threat to free expression; c) inspired resentment against the Federalist Party, although no more than 25 people were charged with violating it; d) all of the above; e) none of these.
6. The First Amendment says, "Congress shall make no law...", and it never mentions state or local governments. Why does the First Amendment apply to the states today? a) because the Supreme Court simply rewrote it without any specific legal basis for doing so; b) because of the "due process" clause of the Fourteenth Amendment; c) because of the Fifth Amendment "due process" clause; d) because of the *Near v. Minnesota* case; e) because of the *New York Times v. Sullivan* case.
7. A normal business tax that was levied against a newspaper by a government agency was upheld in the case of: a) *Grosjean v. American Press Company*; b) *Lovell v. Griffin*; c) *Jones v. City of Opelika*; d) *Corona Daily Independent v. City of Corona*.
8. In the "Pentagon Papers" case the position that freedom of the press should be absolute was supported by: a) all nine justices; b) only the Nixon appointees on the court; c) all six justices who voted in the majority; d) only Justices Black and Douglas; e) none of the nine justices.
9. The Supreme Court has made it clear that the print media cannot be licensed or arbitrarily denied the right to distribute their publications. Some of the leading cases that established this principle involved local government attempts to restrict the religious activities of the Jehovah's Witness movement. Which of these cases involved Jehovah's Witnesses? a) *Lovell v. City of Griffin*; b) *Jones v. City of Opelika*; c) *Valentine v. Chrestensen*; d) *Grosjean v. American Press*; e) both A and B.
10. The *New York Times* malice requirement was extended to many private citizens who just happen to be involved in an issue of public interest by the plurality opinion in: a) *Curtis v. Butts*; b) *Rosenbloom v. Metromedia*; c) *Falwell v. Hustler*; d) *Time v. Firestone*; e) *Gertz v. Welch*.
11. In libel cases, California affords very strong protection to expressions of opinion that are clearly labeled as such. The state Supreme Court emphasized this point in the case of: a) *Times Mirror v. Superior Court*; b) *Kilgore v. Younger*; c) *Rollenhagen v. City of Orange*; d) *Good Government Group of Seal Beach v. Superior Court*; e) *Franklin v. Lodge 1108*.
12. In 1984, the Supreme Court said appellate courts may second-guess a trial court's determination that actual malice is present in a libel case. This ruling came in the case of: a) *Bose v. Consumers Union*; b) *Seattle Times v. Rhinehart*; c) *Keeton v. Hustler*; d) *Calder v. Jones*; e) *Pring v. Penthouse*.
13. In California, broadcast defamation is treated as: a) libel; b) slander; c) disparagement; d) both A and B.
14. The *Stanley v. Magrath* case held that: a) public officials must prove actual malice to win libel cases; b) private persons need NOT prove actual malice to win libel cases; c) school officials may freely censor student newspapers; d) a college administration violated the First Amendment by curtailing the funding of a student newspaper after a controversial "April Fool's Day" issue was published.
15. A high school principal's ban on the distribution of an "underground" student newspaper was ruled an unlawful act of prior censorship in the case of: a) *Trachtmann v. Anker*; b) *Hazelwood v. Kuhlmeier*; c) *Spencer v. Williams*; d) *Bright v. L.A. Unified School District*; e) *Gambino v. Fairfax County Board of Education*.

## ANSWERS AND DISCUSSION

1. a (by definition)
2. d (federal agency decisions may be appealed to the Circuit Courts of Appeals; see the chart of the judicial system in Chapter One of the text.)

3. b ("U.S." stands for "U.S. Supreme Court Reports," the official record of Supreme Court decisions. Both civil and criminal cases are reported in "U.S.", but not decisions of lower courts. The citation tells you nothing about who won the case.)

4. c (a basic historical fact)

5. d (as Chapter Two of the text indicates, choices a, b and c are all correct.)

6. b (In the landmark Gitlow v. New York case, the Supreme Court made the First Amendment applicable to the states. The rationale: the "due process" clause of the Fourteenth Amendment, which forbids the states to deprive "any person" or "life, liberty or property without due process of law." The Fifth Amendment concerns the rights of those accused of crimes.)

7. d (the Corona case illustrates the principle that the media must pay normal taxes just like other businesses, but not discriminatory taxes--as in Ragland and Grosjean. The other choices are cases dealing with other issues.)

8. d (to the alarm of many, only Black and Douglas stood unequivocally against prior restraint in the Pentagon Papers case.)

9. e (Lovell and Jones both involved Jehovah's Witnesses who were harassed by local authorities; the other cases dealt with different First Amendment questions.)

10. b (the Rosenbloom case was the high-water mark in the Supreme Court's progression toward protecting the media from libel suits; things have steadily deteriorated for the media since then.)

11. d (the Seal Beach case is a strong affirmation of California's commitment to protect expressions of opinion from libel suits; the other cases listed involve other libel questions.)

12. a (the Bose case upheld an appellate court's right to overrule a trial judge who reached the troubling conclusion that actual malice was present in a Consumer Reports article about Bose stereo speakers. The other cases listed are also recent, but none deal with this issue.)

13. b (the Civil Code makes broadcast defamation a form of slander and not libel in California.)

14. d (as the text explains, the Stanley case was a victory for the Minnesota Daily, whose funding via mandatory student fees was eliminated because of an offensive April 1 edition.)

15. d (all of the other choices involve situations in which administrative censorship was permitted by the courts or situations in which an official--as opposed to "underground"--student publication was censored.)

## TEST RECORD

## IMPORTANT

USE NO. 2 PENCIL ONLY

EXAMPLE:  A  B  C  D  E

ERASE COMPLETELY TO CHANGE

© SCANTRON CORPORATION 1972 U.S. PAT. NO. 3,600,439 &amp; 3,600,441 AND OTHER PAT. PEND.

NAME Joe BustilloSUBJECT Comm 407 Exam #2DATE 4-2-90 HOUR 7:00 pm

FORM 882

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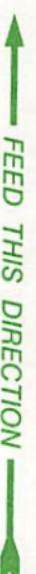
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(T) (F) KEY  
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PART 2

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100	c A	c B	c C	c D	c E

NAME \_\_\_\_\_

FEED THIS DIRECTION 

- Constitutional Right of Privacy arg 5-9 - next meeting
- Media Privacy

\* Libel, old libel - ruined reputation

\* Invasion of privacy - new libel -

not until big enough govt/media  
Tort action / sued for libel also  
sue for invasion of privacy.

truth = not always a defense

History : 1890 - Harvard Law Review - publishing  
ought to be right of privacy - 100 yrs ago  
Lair Brandeis & Warren (Singer) -  
Govt & media so big & powerful/guard  
public needs protection. Court recognized  
need for it then state legislator.

Pavesich vs New England Life Insurance Co

- used old man's photograph in an ad w/o  
permission. → resulted in celebrity endorsement...  
can't use w/o permission for commercial gain  
misappropriation, invasion of privacy & the right of publicity

misappropriation - form of invasion of privacy  
that is + with part of person's likeness  
or personal public persona

\* Miller v. Ford 1988 p.8 - Young & Rubicam  
"people think it's me" during Harvey Sader  
- trial court threw it out / US. Court of Appeals  
call it misappropriation → Ford #10,000 under trial court  
trial Court #400,000 → ~~something~~  
not being contested in court.

\* Tracy Slatton v. Goodyear -  
defend for "these tires are made for bating"  
Sued - lost - not close enough

\* Carson v. Heile's Towing  
portable toilets ... sued & won  
court of appeals - he has right to the phrase

News item / biography -  
misappropriation ~~only~~ considered but not in  
journalistic / book context

\* Aer - p. 36 Cal Suppl. / p. 89 National  
v. Forum International

journalists can do it w/o permission b/c  
not advertising -

frank ~~keeler~~ star for

Patricia Hearst got interview w/ Cher  
for US magazine but rejected - sold  
to Star & Forum

"Cher, her husband & her magazines were ..."

"but Cher wouldn't tell People or US she  
shared w/ Forum ..."

law suit vs. Star but not vs. Forum  
because they took article & made it into an  
endorsement ...

Doesn't inhibit journalist but not endorsement  
→ actual defense = consent.

→ original trial invasion of privacy was misappropriation  
→ court rejected the law w/o statute ...

constitutional right & Privacy  
Grinman

Brookings

Katz vs. U.S. 1967 - legal uses & eavesdropping.  
wiretap on public phone - conviction overturned

connected phone bugged use payphone cops curious ...  
→ justifiable right to privacy - thought he  
was free from surveillance

- Contraception - 20/25 yrs ago illegal to use devices even married couples
  - \* Griswold v. Conn. 1965  $\rightarrow$  "use a condom, go to jail"  $\rightarrow$  those state laws are all unconstitutional"
- Abortion - \* Roe v. Wade 1973
  - woman's right to terminate or continue pregnancy - 1<sup>st</sup> trimester - no interference
  - 2<sup>nd</sup> " - ~~mostly~~ make regulations
  - 3<sup>rd</sup> " - ~~mostly~~ at law

### Sodomy

\* Bowers v. Hardwick - 1986

Georgia law, minor traffic ticket, cost him to bring case to Hardwick - D.A. doesn't press charges. Hardwick brings civil suit, loses all the way to the Supreme Court.  
Draws the line at homosexuality ...  
States have the right to regulate ...

inconsistent w/ early findings re:  
contraception / birth control / abortion . . .

new court (with individuals' right & privacy).

didn't like above decisions : (A) amend constitution  
(B) wait till courts reverse itself

Mediz / Murphy

- \* Wk appropriation — see above
- \* Private facts —

newsworthiness is the defense - someone running for public office; past history = newsworthy -  
private facts don't always work

hetherliek Reid - typed canon "case"

Briseboar vs Readers Digest - "Crni doesn't pay" story -  
[cal court for right to trial - relation of private facts  
interview - journalist / photojournalist

\* Diaz vs. Oakland Tribune - (transcript '83)  
first woman <sup>to</sup> become first student body president -  
~~the~~ Oakland Tribune gets information from her friend  
[p. 30 Cal Suppl] source - in California  
person suing w/ prove item is not newsworthy.  
broad - f prob stuff

~~newspaper has the right to publish any information before they publish it~~

Cox Broadcasting vs. O'Brien - 1975 - Georgia law  
against new & rape victims - legally gained  
information - has the right to publish it; in  
public record

Florida Star vs. B.J.F. 1989 - crime victim -  
police record - legally obtained -

George Nicholson vs. The Clatchy Newspapers (1986)  
stated he was not minimally qualified for  
numerous judgeship - the naked & Sacramento  
Bee - has right to publish especially in light  
of taking run for State Attorney General ...  
media does it often lose private parts case

Intrusion -

close to trespassing but not quite -  
Galella vs. Grosso -

Followed her around ... court order to  
stay forty feet away - Court of Appeals  
reduces it to 25 feet away 1 year later  
court judgment against Galella - contempt of court

Muller vs NBC - (scary news crew following  
protestor protestor crew wound -  
Muller heart attack ... ~~crosses~~  
network user on news + attorney  
is user ... Calif court → Muller has a  
case, wait than it not

### False Light -

\* Time Inc vs Hill (1967) "The Desperate Hours"

Life magazine - writer makes book/play/movie based  
on incident - fictionalized -

Hill say play is about "Hill family -  
Hill's lawyer suit - Supreme Court invoke Sullivan Rule

not prove wallace - loses

\* Carroll vs Forest City Publishing (74)

Ohio bridge collapses - bumper to bumper traffic

- ice load ... Ohio Plain Dealer - 6 months later

how are they doing - Sunday magazine story

w/o talking to women - how she felt, etc.

interviewed children ... how case is six figure

sum →

→ held up fairly but not necessarily bad

Feltus vs. National Biscuit → Feltus v. Angelil

Dickinson story - libel pr 4th - if you know

Additional facts -

Sues for fibre light invasion of privacy -  
can't prove libel special damages tries to do and  
run ~~that~~ do fibre light privacy (public figure)  
but prove special damages (at  $\delta$  pocket)  
loses this case as well ...

Sound like libel -

libel w/o being actual defamable.

comm 407 3/12

Chap 6 - Copyright/Trademarks/Patents

Fed not state issue.

Intellectual Property law

- ownership of stuff considered 'private property'

→ analogy = house illustration -  
people involved in building houses

Properties = rent

Differences:

\* Copyrights - protect literary: Pictures/works in  
works of art - little drawing  
software  
music lyrics/score  
video /

\* trademarks: words & phrases that have  
commercial value

Coca-cola, IBM - you can use a trademark  
use a book/article ... as long as  
duly noting trademark ownership  
- can't use to make another product  
w/ same name

\* Patents - protects mechanical device, processes ...

little relevance to intellectual expression

Copyright Act - What can - literary artistic creation  
some degree of originality / artistic /  
creativity

Cannot copyright the facts - eg. radio  
say Last Time copy in news  
segment - to use rewrite facts.

Illustration: United Airlines crash w  
Omaha City, Iowa  $\rightarrow$  use of video  
shot + then paid copyright schedule  
after-the-fact - the facts are not  
copyrightable but the video (descriptions)

Cannot copyright expression of idea -

cannot copyright trademarks

benefits of getting a copyright -

as soon as you fix something in a  
fixable medium & expression = you own it.  
eg., words on disk, sketch on paper. . .

to make it more "legitimate"

(1) Notice : © 1990 by owner

(2) registration : goit form

deposit requirement - 2 copies of work  
\$10.00 fee

→ don't have to wait for publication to be declared copyrighted

someone infringes your work :

see for copyright infringement :

lost of   
not registered   
First

- (1) attorney fees
- (2) statutory damages - schedule fee
- (3) actual damages - provable profits by the infringer
- (4) injunctions - don't do it again
- (5) impoundment - must sell or destroy pirated copies.

Duration of copyright = author's life + 50 yrs.

Multiple authors / corporate work = 75 yrs from publication

or 100 yrs from creation of unpublished work

Co-authored - last surviving author + 50 yrs.

Public Domain - belongs to everyone.

take classic work in p.d. & re-arrange it...

→ Significant artistic creations -

"Derivative work" can be copyrighted but not underlying classic.

ASCAP - BMI - music

Amer Society of Composers / Artists / <sup>publishers</sup> ~~producers~~

Broadcast music corp.

every kind of business that uses copyrighted material e.g. churches, radio stations, clubs...

Blanket license - rights to whole list.

Small businesses except - 20th Century

music vs Aiken (Chicken cacciatore / radio on the shelf) -

Large business - Sklar Music vs ~~Gold~~

## Copyright Royalty Tribunal - CRT

compulsory licensing - once music is published/copyrighted - any body if they're paid royalties set by CRT they can perform it.

- \* works for hire → employed for newspaper - works copyright owned by newspaper
  - community for creative non-violence vs Reid. Who has the right to reproduce work
    - is the work an employee but an independent contractor : only if 1st employee does organization own copyright - in the absence of contract
- [Books → most writers sign over copyright to publisher]

- \* Moral Rights : name glorification

Europe - 100 yrs - moral rights - creator gives rights over the art, even though copyright owner has right to reproduce

Berne Convention - International  
agreement copyright system  
U.S. joined Berne Convention 1990  
recognizing moral rights -  
lawsuits most likely to result -  
tide turned when U.S. copyrights were  
being ~~paper~~ pirated

( Fair Use vs <sup>103</sup> book -  
infringement )

Sony Corp vs Universal City Studios  
court case went against Universal because  
& non-copyright use of video system  
provided basis - the shifting =  
Fair-use

→ situation - technology got way ahead of  
the laws.

Hunger & Bone Pub vs. The Nation Enterprise

NTL sued for quoting part of Ford's memoirs  
(1985) copy before book was out

L. for Hubbard - unpublished letters  
Troyer question re: fair use in unpublished  
works

Copyright law must lead on to First Amendmt.

Unfair competition - Supreme court -  
International News Service v Associated  
Press (1918) - INS was rewriting  
AP stories & systematically putting it  
on its own wire - went doing own  
news gathering -

Trade marks:

Can copyright & not use  
trademarks = use it or lose it.

Journalistic/common usage Fall into common  
use lose eg aspirin...

→ copyright limited time/trademark  
power...

copyright gets automatic at creation  
trademarks → prove that someone else  
is using your trademark - must  
prove secondary meaning.

recently created rebranded trademarks

Exxon -

Citgo

NAVISTAR - used to be International Harvester

causing consumer confusion

4/16 Ch 407

### Roth Test

- Average person
- Contemporary  
Community Standards
- Domestically there

Wendell	Miller
- Roth +	Roth +
- Patent offensiveness	Patent offensiveness
- utterly lacking RSV	Lacking SLAPSV Good Standards

1957:

Sequel content = could be banned - bookstore  
rated books ~~should~~ banned, European movies  
censored

Roth vs US (1957) Supreme Court - new definition of obscenity:  
it is not protected by the 1st Amendment,  
but if it is really offensive, it can't be  
banned..."

very hard to define obscenity. Took a  
stabs at defining obscenity (p. 166):

Average person applying contemporary  
standards whose dominant theme  
appeals to lust "⇒"

- (1) have to judge on basis of average person  
& not one's most susceptible (old standard  
was ~~harm~~ it affected children)
- (2) contemporary ever changing standards

(3) can't judge on the basis of a single passage.

CASES:

\* Jacobellis vs Ohio - what's the community standard? what's the definition of community?  $\Rightarrow$  Standards are national - can't have something in one place + not somewhere else

\* Massachusetts 1966 "Fairy Hill" 1700's  
"Fairy Hill"  $\Rightarrow$  Morris for women's pleasure  
1960s - college popularity, stained Herring  
Sisters  $\Rightarrow$  Catholic publish last it  
Is this book obscene?

Decision addition to test/expand def

(1) Rate test plus

(2) state/local law that must

define patent offensiveness +  
not but requirement

(3) after looking + peddling social value

- almost impossible to prove #3 beyond

any given standard by a doubt

(which is too far +

(which should + not any

about legal new protection (5)

1968 - Nixon campaign & clear of America  
4 Nixon appointees on Supreme Court

Miller vs. Calif. (1973)

~~in definition~~ - ~~PC in particular~~

- (1) Prurient interest
- (2) Patent offensiveness
- (3) Lacking serious literary/artistic/political/scientific value [replacing "utterly lacking in social redeeming value"]
- (4) Local standards - one locality can judge material obscene in one way but not another.

States don't have to go after porn

(( p. 62 Ch. 5 Supplement))

Cal standard not following Miller - more freedom - "state will" standard.

zoning - local govt  
minors -  
(7) peddling - promoting something for sale

island ~~Gloucester vs US - pending -~~  
= okay to get ~~in~~ in other material  
published

Garrison in NY - in ~~Refugee~~ sale  
and have ~~and this~~ ~~but~~ do not  
have to be like obscene to be  
banned for minors

Young in her min-theater -  
Rector in Baptie theater -

regular tri/plee/wain ~~acting~~

( Pope vs Illinois (87) ~~did not~~  
Jenkins vs Georgia )

Still up as ~~sold~~ ~~not~~ ~~not~~

- when ~~not~~ ~~not~~ the ~~not~~ ~~not~~ ~~not~~  
but of "theatre" - ~~not~~ ~~not~~ ~~not~~

May 1st - ~~play~~ ~~not~~ ~~not~~

- ~~orient~~

of first ~~play~~ - ~~play~~ ~~not~~ ~~not~~  
Color

Conn 407 4/23

Osborne vs Ohio

if state chooses to ban it - you don't have the right to possess para material involving minors.

20 yrs. ago

Stanley vs Georgia  
law against porn -  
protected against  
not in itself a crime  
possession not a crime

Don't have to be legally obscene for it to be illegal ~~to possess~~ when it involves a minor.

## Chap 11 - Regulation of Media

(1) How E.m. Govt Regulates THEY ARE.

FCC - Fed Comm Commission  
~~Broadcast~~ ~~Mass Media~~

FCC - Fed. Trade Commission

Radio Act 1912

Radio Act 1927

~~Mass~~ Communication 4 - 1934  
Act

(2)

~~1~~ ~~Bravo~~ ~~Macau~~ wireless  
ships of sea  
Potential for sinking - use S stay off  
into the ~~forward~~ ~~forward~~ ~~forward~~

part of light (a) ~~Never~~ ~~in the shadow of~~ ~~light~~ ~~never~~



nothing re: brand use

~~Bravo~~ ~~Macau~~ - 11000

~~Station~~ ~~Macau~~ good w. E well (D)

Details of plan and bet - 909

"Seaway" possible Fed. Radio Corp.

Among the few Japan Japan Japan Japan

part of Japan Japan Japan Japan

1933 - Fed Radio Commission - FDR

↳ FCC → given an off completed  
standard ~~standard~~ ~~introducing~~  
~~work by~~

Radio

CTV

long distance phone system

~~broadcasts~~ ~~and~~ ~~advertisements~~

~~broadcasts~~ must serve public good.

Cable stations not covered by FCC rules

### BROADCAST LICENSING

must have a radio license

5 years - TV (acceptance)

7 years - Radio

new stations → post card ~~post card~~  
application  
renewal

- 4 -

"Petition to Deny" (initial B7-EPS)

- designated for hearing, hearing

F for I use  
preferred preferable

L the result ~~of~~ expectation:

RICO v. U.S.

After 197 for losses in facts also

disposition negotiation

exist, exist, exist, exist  
(negotiation) VT - wif  
abt - wif

Person has by contract for  
abt

CHAPTER 10: OBSCENITY AND THE FIRST AMENDMENT

CHAPTER 11: REGULATING THE ELECTRONIC MEDIA

CHAPTER 12: ADVERTISING RIGHTS AND REGULATIONS

CHAPTER 13: MEDIA OWNERSHIP AND ANTITRUST LAWS

CHAPTER 10:

CHAPTER 11:

CHAPTER 12:

CHAPTER 13:

## CHAPTER 10: OBSCENITY AND THE FIRST AMENDMENT

### SUMMARY

#### Does the First Amendment Protect Obscenity?

The Supreme Court has consistently held that the First Amendment DOES NOT protect materials that are legally obscene, but it does protect materials that may be vulgar and offensive but not legally obscene. Thus, the crucial issue is defining obscenity. If a work is legally obscene, it may be censored and its producers may be punished. If it is not obscene, it is protected by the First Amendment and may not be censored.

#### What Was the Hicklin Rule?

For many years, obscenity was defined by the Hicklin Rule, which looked to a work's effect on the MOST SUSCEPTIBLE members of society to determine if it was obscene. Also, the Hicklin Rule permitted classifying a work as obscene even if only isolated passages were obscene, regardless of the literary merit of the work as a whole.

#### What Happened to the Hicklin Rule?

The Hicklin Rule was followed in both the United States and England through much of the Victorian era, but it was abandoned in the twentieth century. The key turning point was the "Ulysses" decision, in which a federal court refused to follow the Hicklin Rule and instead viewed James Joyce's classic work as a whole and weighed its effect on average persons.

#### What Was the Roth Test?

Handed down by the Supreme Court in 1957, the Roth test defined obscenity by asking, "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest." The result was that the First Amendment protection was extended to many works that might have been classified as obscene in an earlier era.

#### How Was the Roth Test Interpreted?

In a series of decisions during the 1960s, the Supreme Court amplified its Roth decision. For a time, it appeared that "community standards" were national standards, and that a work could not be censored unless it was "patently offensive" and "utterly without redeeming social value."

#### What Was the Miller v. California Decision?

In 1973, a new conservative majority on the Supreme Court redefined obscenity, abandoning both the idea of national standards and the "social value" test. In its place, the Supreme Court said a work is legally obscene if: 1) it meets the original Roth test; 2) it describes sexual conduct in a "patently offensive" way; and 3) the work, taken as a whole, lacks serious literary, artistic, political or scientific value. The court

made it clear that community standards could be local and could vary from place to place.

## CHAPTER 11: REGULATING THE ELECTRONIC MEDIA

### SUMMARY

#### Why Do Broadcasters Have Special Laws to Follow?

Broadcasters do not own their frequencies. The radio spectrum is a valuable and limited resource; Congress has declared that those who are given the privilege of using it must serve "the public interest, convenience, or necessity." Thus, broadcasters must answer to the Federal Communications Commission for the way they use their frequencies. They must secure licenses and then renew them periodically. In addition, they are subject to certain controls on the content of their broadcasts.

#### Why Is the Spectrum So Limited?

The radio spectrum can accommodate a large number of different users at the same time. As a policy judgment, both the FCC and international regulatory bodies have allocated only a limited portion of the spectrum to broadcasting. Radio (as opposed to television) broadcasting has been given a particularly small part of the spectrum. Recently, however, the FCC has taken steps to make more AM, FM and television frequency assignments available.

#### Are License Renewals Automatic?

No. However, if the broadcaster's service record is considered "substantial," a renewal is almost a certainty. License renewal challenges by citizens' groups and others have become much more commonplace than they once were, but non-renewals are still rare. In several instances, broadcasters have lost licenses for violating FCC rules or criminal laws, but more often even those guilty of serious offenses have been permitted to sell (and transfer their licenses to someone else) to avoid a license revocation.

#### What Was the Fairness Doctrine?

The Fairness Doctrine was a policy of the FCC that for nearly 40 years required broadcasters to provide overall balance in their programming. It was abolished in 1987, to the great consternation of Congress and many public interest groups but to the delight of broadcasters who objected to the doctrine's provision allowing FCC officials to second-guess their news judgments. However, the FCC did not abolish the Personal Attack Rule, which requires broadcasters to provide airtime to victims of personal attacks. The Fairness Doctrine should not be confused with the Equal Time Rule, a provision of the Communications Act that requires broadcasters to make equal time available to rival political candidates---at comparable

rates. In addition to abolishing the Fairness Doctrine, the FCC has recently taken other actions to deregulate broadcasting in the belief that marketplace forces and creative spectrum management will ensure that broadcasters serve the public interest.

#### How is Cable Television Regulated?

Cable television systems need no FCC license as such, since they do not broadcast over air. However, cable systems are subject to many FCC rules because their operations affect on-the-air broadcasting. The FCC has extensively deregulated cable television since 1980. In 1984 Congress passed a law that curtailed the right of local governments to regulate cable in various ways. However, cable systems continue to operate under franchise agreements, which are authorizations from municipal governments to serve specific areas.

### CHAPTER 12: ADVERTISING RIGHTS AND REGULATIONS

#### SUMMARY

##### Is Advertising Protected by the First Amendment?

Until 1975 it would have been safe to say the "commercial speech" was not generally protected by the First Amendment. However, since then the Supreme Court has extended some constitutional protection to both commercial speech and non-commercial corporate speech.

##### Is Media Law Generally Applicable to Advertising?

While advertising has its own unique body of law, the general rules of media law also apply to advertising. An advertisement may lead to a lawsuit for libel, invasion of privacy, commercial misappropriation, copyright infringement or trademark infringement, for instance.

##### Do Advertisers Have a Right of Access to the Media?

Generally, there is no right of access to the media. A publisher or broadcaster may accept or reject advertising at will, unless the acceptance and rejections fall into a pattern of unfair or monopolistic business practices. However, broadcasters (but not newspaper or magazine publishers) must sell advertising to federal election candidates, and sometimes state-owned media are required to grant advertising access.

##### Who Regulates Advertising Content and Why?

The primary federal agency that regulates advertising is the Federal Trade Commission. To protect the public from false and misleading advertising, the FTC has a Congressional mandate to monitor advertising and act against practices it considers improper. Since 1980, the FTC has faced budget cuts and policy decisions by its own commissioners that curtailed its once-aggressive role in acting against questionable advertising practices.

### How Does the FTC Enforce Its Regulations

The FTC has a variety of enforcement tools, including publicity, informal letters of compliance, consent decrees and cease and desist decrees. The FTC may require substantiation of an advertising claim, and it may order corrective advertising if an ad has been particularly false or misleading.

### Does Anyone Else Regulate Advertising?

A number of other federal agencies have authority over certain kinds of advertising. Also, all 50 states have statutory laws prohibiting fraudulent business practices; many states vigorously enforce these laws against false advertisers, but some are less diligent. The advertising industry has an elaborate system of self-regulation as well. In recent years the National Association of Attorneys General has brought together the chief prosecutors of the 50 states to coordinate nation-wide actions against allegedly fraudulent advertising practices that the FTC chose not to act against.

## CHAPTER 13: MEDIA OWNERSHIP AND ANTITRUST LAWS

### SUMMARY

#### Do Antitrust Laws Apply to the Media

For many years, publishers contended that the First Amendment exempted them from antitrust laws, but the Supreme Court ruled otherwise in 1945. Today, the mass media are subject to the same antitrust laws as other businesses.

#### What Business Practices Are Unlawful?

Antitrust laws forbid a variety of practices, including tying arrangements (in which a company with a monopoly on a certain commodity forces customers to buy something else that they may not want to obtain the item that is unavailable elsewhere) and certain boycotts and other coercive practices. Also mergers that reduce competition are usually unlawful. The federal government has occasionally acted against the media for violating these laws.

#### What Is a Joint Operating Agreement?

Under a "joint operating agreement," two competing newspapers merge their business, advertising and printing operations while maintaining separate editorial staffs. Some publishers say they could not stay in business without such arrangements. The Supreme Court once ruled that a joint operating agreement violated antitrust laws, but then Congress passed the Newspaper Preservation Act, legalizing existing agreements and setting up a procedure for the approval of new ones.

#### What is Cross-Ownership?

Cross-ownership occurs when one part owns a combination of newspapers, broadcast properties and/or cable systems in the same metropolitan market area.

#### Are Cross-Ownership Prohibited?

Under FCC rules that have been upheld by the Supreme Court, new newspaper-broadcast cross-ownerships are forbidden, but most existing cross-owners were not required to sell any of their properties. Cable-broadcast combinations in the same market are also forbidden, as is the acquisition of one or more radio stations by a firm that owns a television station in the same market. However, a number of companies have obtained waivers of these FCC rules.

#### What is the Rule of Twelves?

The Rule of Twelves is an FCC regulation that says a company may own no more than 12 television stations, 12 AM radio stations and 12 FM stations. In addition, the 12 tv stations may not reach a combined total or more than 25 percent of the nation's tv households. If a firm owns a UHF tv station instead of a VHF tv station in a market area, only half the households there are counted toward this total.

#### How Will the New Technologies Affect Media Ownership?

As new technologies such as fiber optics, satellite communication and high-definition tv develop, the print and electronic media---and ultimately the telephone companies as well---will probably attempt to become direct competitors, with each seeking to offer as many communication services as possible.

#### CHAPTER 10:

##### Hannegan v. Esquire 1964

mag more sexually oriented than today; postmaster general refused the magazine second class mailing privileges; federal appellate court reversed that postal decision; SC agreed; Willion O. Douglas "Congress has left the postmaster general with no power to prescribe standards for literature or the art which a mailable periodical disseminates"

##### Roth v. US '57

Samuel Roth convicted under federal law for mailing circulars, a book and advert material that were considered obscene; [Albert v. California]--conviction upheld but new rule: obscene material not protected but new def of obscenity: "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest."

Jacobellis v. Ohio '64

Nico Jacobellis, theater manager violating Ohio law by showing french film "Les Amants"; court overturned decision; film not obscene, shown in about 100 cities (2 in Ohio); Brennan, need National standard; Warren protest, community diversity.

Memoirs v. Massachusetts (Fanny Hill) '66

SC : Fanny Hill=not obscene; Brennan: 3-part-test: Roth test, plus "patent offensiveness" and "utterly without redeeming social value." 1750 John Cleland, book censors Massachusetts 1821; 1960s translated into braille, placed in the Library of Congress . . . .

Ginzburg v. US '66

Ralph Ginzburg, well-known pornographer; avoided dealing with the question of whether the publication he wa convicted of maarketing were inherently obscene and instead took note of the way he promoted his works; conviction on the basis of the conduct of the seller; Blue Ball and Intercourse, PA or Middlesex, NJ mailing places

Ginsberg v. New York '68

Sam Ginsberg for violating a state law against selling to minors materials defined to be obscene on the basis of its supposed effect on them; "variable obscenity"

Stanley v. Georgia '69

law enforcement "fishing expedition" Police searched Robert Eli Stanley's home in quest of bookmaking material found porno films; Marshall, use even obscene materials in the privacy of one's home.

US v. Reidel and US v. 37 Photographs '71

Reidel: upheld federal obscenity law's ban on mailing obscene material, even to consenting adults; 37 photos: customs could still seize obscene materials fomr returning traveler's luggage, even if intended for private use.

Miller v. California '73

Marvin Miller conducted a mass mail campaign to sell "adult" material; 5 brochures were sent to a Newport Beach, CA restaurant and the recipients complained to police. New obscenity test:

1) an average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest; 2) The work depicts or describes, in a patently offensive way, sexual conduct

specifically defined by the applicable state law; 3) The work, taken as a whole, lacks serious literary, artistic, political or scientific value.

Jenkins v. Georgia '74

Billy Jenkins, theater manager, convicted showing R-rated Academy Award-nominated "Carnal Knowledge"; hedging court's commitment to "local standards"

Young v. American Mini-Theaters '76

use of zoning laws; control time, place and manner

Schad v. Mt. Ephraim '81

communities could not use zoning to banish adult entertainment entirely without violating the First Amendment; SC overturned law: mere nudity is not obscene; city could ban all forms of entertainment (including motion pictures) but not just some . . .

New York v. Ferber

New York law that permitted criminal prosecutions for those who produce or sell printed matter or movies in which minors perform sex acts, without any proof of obscenity;

Renton v. Playtime Theaters, '86

could prohibit adult businesses within 1,000 feet of any park, school, church or private home;

Pope v. Illinois '87

the measurement of "serious . . . value" = based on objective standards, a "reasonable man" test should be used to determine whether a literary work has serious value; expert witnesses could be summoned to testify as to the serious literary, artistic, political or scientific value; White: "the proper inquiry is not whether an ordinary member of any given community would find literary, artistic, political, or scientific value in allegedly obscene material, but whether a reasonable person would find such value in the material taken as a whole.

Morris v. Municipal Court '82

Santa Clara county prohibited nude performances except in concert halls and theaters; CA SC pointed out subjectiveness, court refused to distinguish between the rights and tastes of the well-heeled patrons of legitimate theaters and those of the blue-collar customers of the bar.

CHAPTER 11:

Cases: Broadcast ownership and licensing

Office of Communication of United Church of Christ v. FCC '69

landmark court decision giving citizens' groups right to challenge license renewals; appealed the FCC's radio deregulation to the US Court of Appeals

Central Florida Emnterprises v. FCC '82

FCC's new policy of considering a licensee's "renewal expectancy" whenever there is evidence of "substantial" service

RKO General v. FCC '81

General Tire illegal activity, big case, Boston license lost, allowed to move NY station to NJ and then sell, sell LA station, sell other stations for 2/3 market value. FCC claim frequencies = public, but equals valuable property to be bought and sold.

Cases: Broadcast Content regulations

Red Lion v. FCC '69

Fairness Doctrine: '64 presidential election, evangelist attacked Fred Cook, author of a book critical of Barry Goldwater; Cook demanded reply time under the Personal Attack Rule; Red Lion: "buy time"; FCC "give it to him"; SC: 'yes 1st amendment, but public priority to broadcaster; give it to him'.

CBS v. Democratic National Committee '73

broadcaster may reject editorial advertising if they wish.

CBS v. FCC '81

6-3 voting affirmed the commission's authority under Section 312(a)(7) to order broadcasters to air federal candidates' political statements.

Banzhaf v. FCC '68

a federal appellate court upheld the ruling that broadcasters who carried cigarette advertising (which was legal then) to provide free reply time to anti-smoking groups under the Fairness Doctrine.

Public Interest Research Group v. FCC '78

FCC new rules said that henceforth the Fairness Doctrine would not apply to commercial advertising for products; ads for snowmobiles and environmentalists

Pacifica Foundation v. FCC '78

FCC v. WNCN Listeners Guild '81

FCC v. League of Women Voters of Calif., '84

Telecommunications Research Action Center v. FCC '86

Syracuse Peace Council v. FCC '89

Sable Communications v. FCC '89

Cases: Cable and new technologies regulation

US v. Southwestern Cable Co. '68

US v. Midwest Video '79

Capital Cities Cable v. Crip '84 [also New York City v. FCC '88]

Home Box Office v. FCC '77

Quincy Cable v. FCC; Turner Broadcasting v. FCC '85

Century Communications Corp v. FCC '87

City of Los Angeles v. Preferred Communications '86

Wilkinson v. Jones '87

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Valentine v. Chrestensen '42

Bigelow v. Virginia '75

Virginia Citizens Consumer Council v. Virginia State Board of Pharmacy '76

Linmark Associates v. Village of Willingboro '77

Bates v. Arizona State Bar [Zauderer v. Office of Disciplinary Counsel '85]  
'77

First National Bank v. Bellotti '78

Consolidated Edison v. Public Service Commission '80

Central Hudson v. Public Service Commission '80  
Metromedia v. San Diego '81  
Members of the L.A. City Council v. Taxpayers for Vincent '84  
Bolger v. Youngs Drug Products Corp. '83  
Dunagin v. Oxford/Lamar Outdoor Advertising v. Mississippi Tax Commission '83  
Posadoas de Puerto Rico v. Tourism Company of Puerto Rico '86  
State University of New York v. Fox '89  
Chicago Joint Board v. Chicago Tribune '70  
Adult Film Assn. v. Times-Mirror corp. '79  
Lehman v. Shaer Heights '74  
Tornilio v. Miami Herald '74  
FTC v. Cogate-Polmolive '65  
Warner-Lambert v. FTC '77  
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Associated Press v. US '45  
Lorain Journal v. US '51  
US v. Times-Picayune '53  
US v. Kansas City Star '57  
US v. Times-Mirror '67  
Citizen Publishing v. US '69  
Committee for an Independent P-I v. Hearst Corp. '83  
National Citizens Committee for Broadcasting v. FCC '78